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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,089	04/14/2004	Kenneth M. Nicolay	106.04	7020
37761	7590	08/25/2005	EXAMINER	
ERICKSON & KLEYPAS, L.L.C. 800 W. 47TH STREET, SUITE 401 KANSAS CITY, MO 64112			JACKSON, ANDRE L	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/824,089

Applicant(s)

NICOLAY ET AL.

Examiner

Andre' L. Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-14 and 16-23 is/are rejected.
- 7) ☒ Claim(s) 8 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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*DETAILED ACTION*

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 16 -18, 22 and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by USPN 6,592,160 to Nicolay et al. Nicolay et al discloses a tool handle, the tool handle comprising;

a telescoping leg assembly comprising first and second legs (19), each of the legs having a first end and a second end and portions of the first and second legs extending in parallel relation, a first cross-member (47) extending between the first and second legs proximate the first ends thereof, a second cross-member (33) extending between the first and second legs proximate the second ends thereof, a tool head connector (23) connected to the second cross-member between the first and second legs and projecting outward therefrom; the tool head connector adapted for connecting a tool head (5) thereto; and an inner grip handle (38) pivotally mounted on sliding connectors (41) which are slidingly connected to the first and second legs via sleeves (49, 51) such that the inner grip handle is slidable toward and away from the second cross-member and the inner grip handle is pivotable between a retracted position and an operating position, in the operating positions the inner grip handle extends outward from a plane defined by the portions of the first and second legs extending in parallel relation.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5-7, 9, 10, 13, 14, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 2,629,624 to Nelles in view of USPN 6360402 to Crabtree. Nelles discloses folding tool with handle, the handle comprising;

first and second legs (11), each of the legs having a first end and a second end; a first cross-member (17) extending between the first and second legs proximate the first ends thereof; a second cross-member (24) extending between the first and second legs proximate the second ends thereof; an inner grip handle (21) connected to and extending between the first and second legs between the first and second ends thereof; a tool head connector (7, 8) connected to the second cross-member; the tool head connector adapted for connecting a tool head (1) thereto. However, Nelles does not specifically disclose an outer grip handle mounted to the first cross-member and extending perpendicular to the first cross-member as claimed. Crabtree teaches a pull handle (20) mounted to a cross handle (56) disposed between a pair of telescoping legs (110). The pull handle may swivel or pivot to numerous positions to accommodate a user handling a travel case (58) at various angles during pulling or pushing operations. Therefore, it would be obvious to one having ordinary skill in the art at the time of applicant's invention to modify the folding tool of Nelles to incorporate the pull handle as taught by Crabtree to provide

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a multi-versatile handle tool that may swivel or pivot to numerous positions to easily assist a user during initial folding/unfolding positions or during pulling/pushing operations in use.

As to claims 6, 7, 13 and 14, Crabtree discloses that the outer grip handle includes a securing means in the form of locking members (22, 24) which releasably secures the outer grip handle via straps and strap connectors (18, 21) in a selected orientation relative to the legs.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelles in view of Crabtree in further view of Nicolay et al. Nelles in view of Crabtree fails to disclose that the inner grip handle is connected to the first and second legs by a sliding connector and wherein the inner grip handle is pivotable between first and second positions as claimed. Nicolay et al discloses a tool handle comprising a telescoping leg assembly comprising first and second legs (19), a first cross-member (47) extending between the first and second legs, a second cross-member (33) extending between the first and second legs, a tool head connector (23) connected to the second cross-member and adapted for connecting a tool head (5) thereto; and an inner grip handle (38) pivotally mounted on sliding connectors (41) which are slidably connected to the first and second legs via sleeves (49, 51) such that the inner grip handle is slidable toward and away from the second cross-member and the inner grip handle is pivotable

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between a retracted position (Fig. 1) and an operating position (Fig. 2) which provides an ergonomic design which is comfortable, adjustable to users of various heights and arm lengths while reducing excessive lifting forces on a user during use of the tool. Therefore, it would be obvious to one having ordinary skill in the art at the time of applicant's invention to modify the folding tool of Nelles to incorporate the tool handle as taught by Nicolay et al to provide a user friendly folding tool ergonomic design which is comfortable, adjustable to users of various heights and arm lengths while reducing excessive lifting forces on a user during use of the tool.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nicolay et al in view of Crabtree. Nicolay fails to disclose that the outer grip handle selectively rotates about a pivot axis as claimed. Crabtree teaches a pull handle (20) mounted to a cross handle (56) disposed between a pair of telescoping legs (110). The pull handle may swivel or pivot to numerous positions to accommodate a user handling a travel case (58) at various angles during pulling or pushing operations. Therefore, it would be obvious to one having ordinary skill in the art at the time of applicant's invention to modify the tool handle of Nicolay et al to incorporate the pull handle as taught by Crabtree to provide a multi-versatile tool handle that may swivel or pivot about axes to easily assist a user during pulling or pushing operations as well as reducing excessive lifting forces on a user during use of the tool.

#### ***Allowable Subject Matter***

Claims 8 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### *Response to Arguments*

Applicant's arguments filed in the Amendment of June 9, 2005, with respect to the rejection(s) of claim(s) 1-7, 9-14 and 16-19 in view of Nelles, Waluk and Vosbikian used singly and in combination thereof, have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration and search of the prior art, a new ground(s) of rejection is made in response to applicant's amendment to the claims. Accordingly, #6,592,160 to Nicolay et al and #6,360,402 to Crabtree have been cited and used singly and in combination with Nelles, thus, claims 1-7, 9-14 and 16-23 are found to be unpatentable over the above references.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre' L. Jackson whose telephone number is (571) 272-7067.

The examiner can normally be reached on Mon. - Fri. (9:30 am - 6 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

André L. Jackson  
Patent Examiner  
AU 3677

ALJ

**ROBERT J. SANDY**  
**PRIMARY EXAMINER**

